

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5608 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

MANUBHAI BHIKHABHAI VALAND

Versus

STATE OF GUJARAT

Appearance:

Shri A.J.Patel, Advocate, for the Petitioners.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/09/96

ORAL JUDGEMENT

The order passed by the City Deputy Collector at

Ahmedabad on 21st April 1995 under Section 79-A of the Bombay Land Revenue Code, 1879 (the Code for brief) in Breach of Condition/Remand Case No.21 of 1994 as affirmed in appeal by the order passed by the Collector of Ahmedabad (respondent No.2 herein) on 27th February 1996 in LB/Appeal No.47 of 1995 as further affirmed in revision by the order passed by and on behalf of the State Government (respondent No.1 herein) on 8th July 1996 in Revision Application No.5 of 1996 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, the City Deputy Collector at Ahmedabad ordered eviction of the petitioners from one parcel of land bearing survey No.778 admeasuring 4 acres 23 gunthas situated at village Naroda taluka City district Ahmedabad (Rural) (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The disputed land was granted to the petitioners on 2nd May 1986 on a new and impartial tenure. It appears that construction of houses in the name of Jogeshwari Cooperative Housing Society Ltd. sprang up thereon obviously without any permission whatsoever from any corner or quarter. This fact appears to have come to the notice of the City Deputy Collector at Ahmedabad. He thereupon issued one show cause notice on 3rd March 1988 calling upon the petitioners to show cause why an action for breach of the conditions of grant should not be taken against them. Its copy is at Annexure-B to this petition. The proceeding arising therefrom was registered as Breach of Condition Case No.2 of 1988. It culminated into an order of eviction of the petitioners and resumption of the land by the Government by the order passed on 12th September 1988 by the City Deputy Collector at Ahmedabad. Its copy is at Annexure-C to this petition. It appears that the aforesaid order was affirmed by the City Assistant Collector at Ahmedabad by his order passed on 6th February 1990. It was further affirmed in appeal by the order passed by respondent No.2 in appeal bearing No.LB/Appeal No.60 of 1991. Its copy is at Annexure-D to this petition. It was further affirmed in revision by the order passed by and on behalf of the State Government on 1st June 1993 and communicated on 3rd June 1993. Its copy is at Annexure-E to this petition. The orders at Annexures-C, D and E to this petition came to be set aside by the decision rendered by this court on 3rd October 1994 in Special Civil Application No.1348 of 1993 and the matter was remanded to the City Deputy Collector to proceed according to law after serving to the petitioners a fresh show cause notice. Its copy is at Annexure-F to this petition.

Thereupon, the proceeding came to be registered as Breach of Condition/Remand Case No.21 of 1994. A show cause notice came to be issued by the City Deputy Collector on 29th December 1994 calling upon the petitioners to show cause why an action under Section 79-A of the Code should not be taken for breach of condition of grant. Its copy is at Annexure-G to this petition. The petitioners filed their reply thereto on 10th April 1995. Its copy is at Annexure-H to this petition. Thereafter, by the order passed on 21st April 1995 in the aforesaid proceeding, the City Deputy Collector at Ahmedabad ordered eviction of the petitioner from the disputed land and its resumption by the State Government. Its copy is at Annexure-I to this petition. The aggrieved petitioners carried the matter in appeal before respondent No.2 under Section 203 of the Code. It came to be registered at LB/Appeal No.47 of 1995. By his order passed on 27th February 1996 in the aforesaid appeal, respondent No.2 dismissed it. Its copy is at Annexure-J to this petition. The aggrieved petitioners carried the matter in revision before respondent No.1 under Section 211 of the Code. A copy of the memo of revision is at Annexure-K to this petition. It appears that the authority exercising powers of respondent No.1 under Section 211 of the Code directed the petitioners to implead the occupants of the houses raised on the disputed land as parties pending consideration of the revisional application. Thereupon, the learned Advocate for the petitioner before respondent No.1 expressed his inability to implead those persons as parties to the proceeding mainly on the ground that they were not parties before the City Deputy Collector or before respondent No.2 in appeal. Thereupon, by the order passed on 8th July 1996 by and on behalf of respondent No.1, the aforesaid revisional application of the petitioners came to be rejected. Its copy is below the memo of revision at Annexure-K to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-I to this petition as affirmed in appeal by the appellate order at Annexure-J to this petition as further affirmed in revision by the order passed below the memo of revisional application at Annexure-K to this petition.

3. A bare perusal of the order passed below the memo of revisional application at Annexure-K to this petition would leave no room for doubt that its author does not know even the elementary principles of law. It passes comprehension as to what prompted him to direct the

petitioners to implead the persons in occupation of the houses raised on the disputed land as parties to the revisional proceeding when they were not served with any show cause notice by the City Deputy Collector nor were they parties before respondent No.2 in appeal culminating into the order at Annexure-J to this petition. It further passes comprehension as to how the author of the order below the memo of revisional application at Annexure-K to this petition rejected the revisional application of the petitioners on the ground that those persons were not joined as parties even after the endorsement made by their learned Advocate regarding his inability to implead those persons as parties mainly on the ground that they were not parties before the City Deputy Collector and before respondent No.2.

4. No reasons are recorded why the author of the impugned order below the revisional application at Annexure-K to this petition wanted the occupants of the houses raised on the disputed land to be parties in the revisional proceeding. If he wanted to bind them by the order of eviction, he could have directed the City Deputy Collector at Ahmedabad to take appropriate actions against them. The author of the impugned order below the revisional application at Annexure-K to this petition could not have straightaway bound the occupants of the houses raised on the disputed land by the order in the revisional proceeding. Such an action on his part would be violative of principles of natural justice.

5. It cannot be gainsaid that, before any action is taken against eviction of the occupants of the houses raised on the disputed land, they have to be served with show cause notice according to law by the authority empowered to evict them. The decision of such authority would obviously be subject to appeal and revision as the case may be. It is a settled principle of law that the lack of opportunity of hearing cannot be cured by giving an opportunity of hearing at the appellate or the revisional proceeding in view of the binding Division Bench ruling of this Court in the case of T.S.RABARI v. GOVERNMENT OF GUJARAT reported in 1991 (2) Gujarat Law Herald at page 364. It has clearly been held therein that, if the impugned order is null and void, that vice cannot be cured by affording an opportunity of hearing at the appellate or the revisional stage.

6. It cannot be gainsaid that the revisional powers under Section 211 of the Code are quasi-judicial in nature. As held by the Supreme Court in its ruling in the case of THE SIEMENS ENGINEERING & MANUFACTURING CO.

OF INDIA LTD. v. UNION OF INDIA reported in AIR 1976 Supreme Court at page 1785, every quasi-judicial order should be supported by reasons. This is an elementary principle of law. The impugned order below the revisional application at Annexure-K to this petition does not contain reasons.

7. It thus becomes clear that the impugned order passed by and on behalf of respondent No.1 below the revisional application at Annexure-K to this petition cannot be sustained in law on the ground of non-application of mind on the part of its author to elementary principles of law. The matter will have therefore to be remanded to respondent No.1 for restoration of the proceeding to file and for its fresh decision according to law without insisting on making the occupants of the houses raised on the disputed land as parties in the revisional proceeding.

8. At this stage, learned Advocate Shri Patel for the petitioners states that they would like to move the appropriate authority for conversion of the disputed land from new tenure to old tenure on payment of premium and for regularisation of construction. It will be open to the petitioners to do so provided such an application is made on or before 30th September 1996. As and when such application is made, it is obvious that the concerned authority will decide its fate according to law uninfluenced by the pendency of the proceeding arising from the impugned orders at Annexures-I and J to this petition.

9. In the result, this petition is accepted. The order passed by and on behalf of the State Government (respondent No.1 herein) on 8th July 1996 in both parts below the revisional application at Annexure-K to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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